IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

OP.No. 17412 of 1997(W)

PETITIONER:

T.T.JAYAN, AGED 46 YEARS,
S/O.THOMAS A.,
ASSISTANT DIRECTOR,
MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITIES,
COCHIN-36

BY ADV. SRI.P.V.MOHANAN

RESPONDENTS:

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1. THE CHAIRMAN,
MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY.

2. THE DIRECTOR AND SECRETARY IN-CHARGE,
THE MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY.

3. S.SASIDHARAN PILLAI,
DEPUTY DIRECTOR (ADMINISTRATION),
MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY.

BY ADV. SMT.PAULINE ROSE MATHAI
SMT.P.V.KOCHUTHRESIA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 17412 of 1997(W)

APPENDIX

ORDER ON C.M.P.NO.30996/1997 IN OP.No. 17412 of 1997(W)

CLOSED

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

08/06/2007

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF SENIORITY LIST OF ASSISTANT DIRECTOR AND ACCOUNTS OFFICER.

EXT.P2 TRUE COPY OF THE RECRUITMENT RULE

EXT.P3 TRUE COPY OF THE REPRESENTATION DATED 29/08/1997

EXT.P4 TRUE COPY OF THE PROCEEDINGS DATED 04/09/1997

EXT.P5 TRUE COPY OF THE LETTER DATED 04/09/1997

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 17412 of 1997(W)

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Dated this the 8th day of June, 2007

J U D G M E N T

Petitioner challenges the selection of the third respondent and his consequential appointment as Deputy Director (Administration) in the service of the Marine Products Export Development Authority, M.P.E.D.A for short. Ext.P2 Recruitment Rules provide the method of appointment to the post of Deputy Director of Administration as, by promotion, but after declaring that the said post is a selection post. The field of choice is a composite group, in the sense, the promotion is to be made from Assistant Director (Administration) and from Accounts Officer. The recruitment by promotion is to be made from "Assistant Director (Administration) and Accounts Officer with four years experience in the grade". The third respondent was an Accounts Officer and the petitioner an Assistant Director, leaving aside the perversity as to whether the petitioner was Assistant Director (Administration) or Assistant Director (Registration), the

Departmental Promotion Committee for the selection, consisted of five persons, two of whom were from another institution. Two directors of the Board of M.P.D.E.A and the Chairman of M.P.D.E.A were also members of the DPC. Minutes of the DPC shows that four candidates were evaluated with reference to their confidential reports and by assessing the suitability of candidates. It was noticed that while the petitioner had less than four years experience as Assistant Director, one Sankaran Nair did not have the requisite educational qualification. Resultantly, the third respondent was graded as very good and he was selected and appointed.

2. The petitioner has two fold contentions. Firstly, it is urged that the selection by the DPC is not proper. Secondly, it is urged that the post in question is one that ought to have been treated as exclusively available for recruitment from among Scheduled Caste and, the petitioner being the sole Scheduled Caste candidate, ought to have been appointed by promotion.

3. In dealing with the first contention, I may at once notice that there is no challenge to the constitution of the DPC. The competency of those who were part of the commitment is not under challenge. The file discloses that there was effective consideration, in the sense that the confidential reports were examined and the suitability of the candidates were assessed and the candidates graded by the committee and, proceedings issued under signatures of the members of the committee. The statement in the minutes also reflect that the committee took note of the relevant recruitment rule and selection was made. The post to which selection was being made was that of the Deputy Director of Administration. The Chairman of the Institution and two members of the Board of Directors and the Director of CIFT and the Principal Scientist of CIFT were members of the Board. I find no ground to interfere with the selection procedure.

4. Coming to the second contention that the selection and appointment ought to have been confined to be from among the members of the Scheduled Caste, the petitioner relies on

O.M.No.36012/12/88-Est.(SCT), dated 21/09/1988, issued by the Department of Personnel and Training, which states that when SC/ST officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, they would be included in that list provided they are not considered unfit for promotion. In this context, what becomes relevant is the noting of the DPC that the petitioner had only less than four years of experience in the grade of Assistant Director and the contention of the management in opposition in this original petition that four years experience in the grade of Assistant Director is an essential qualification.

5. Per contra, the petitioner contends that Assistant Director (Administration) is a Group 'A' post, while Accounts Officer is a Group 'B' post and, therefore, the stipulation as to four years experience has to be understood to confine to Accounts Officer only.

6. At the first blush, the arguments of the petitioner appears to be sound. But, though Accounts Officer is a Group 'B' post and Assistant Director (Administration) is a Group 'A' post, Accounts Officer is not a feeder category for appointment to the post of Assistant Director (Administration). The post of Assistant Director (Administration) and the post of Accounts Officer (Administration) are not filled up from a common feeder category. Accounts Officers are appointed by promotion by selection from Accountants and Assistant Director (Administration) is appointed by selection from Section Officers. Therefore, the mere inclusion of the category of Assistant Director (Administration) as a Group 'A' post while placing the Accounts Officer as a Group 'B' post is by itself no intelligible indicia to conclude that it would not have been the intention of the framers of Ext.P2 Recruitment Rule to prescribe four years experience for Assistant Directors also, to aspire for being considered for appointment by promotion to the selection post of Deputy Director. Therefore, the contention of the petitioner that an Assistant Director does not need to acquire four years experience in that grade to be considered for promotion as

Deputy Director, fails. If that be so, the petitioner was unqualified for being considered for promotion as Deputy Director, even though he was considered in a selection where yet another person who did not even possess the required educational qualification was also considered by the DPC. If the petitioner was thus unqualified for being considered to the post of Deputy Director, the question of his being identified as an available candidate to be promoted, unless treated as unfit in terms of the O.M. under reference above, also does not arise.

In the result, the original petition fails and the same is accordingly, dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN,
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 17412/1997(W)

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J U D G M E N T

8th June, 2007